

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGEL REYES Y ALCANTARA, DEFENDANT-APPELLANT.*G.R. No. L-33154. February 27, 1976*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/83a6ab7b1e11/>**PER CURIAM:**

AUTOMATIC REVIEW of the decision of the Circuit Criminal Court of Manila, 6th Judicial District, in Criminal Case No. CCC-VI-279 (70), dated October 27, 1970, the dispositive portion of which reads as follows:

"WHEREFORE, accused is hereby found guilty beyond reasonable doubt as principal of the crime of murder qualified by treachery, and there being proved the aggravating circumstance of taking advantage of public position, without any mitigating circumstance to offset the same the Court sentences him to DEATH, to indemnify the heirs of the deceased the sum of P12,000.00 for the death of the latter, the sum of P8,000.00 by way of moral damages, P8,000.00 by way of exemplary damages, and to pay the costs."

The evidence for the prosecution has established that on October 1, 1970, at about 3:00 o'clock in the afternoon, Jose Garcia and his cousin, the deceased Norberto Flores, were on their way to the place where they drive a taxi, which was near their respective residences on G. Tuason, Sampaloc, Manila. Along the way, they stopped awhile and joined a group of people watching and observing an insane person. While thus engaged, two men, one of whom was the accused Angel Reyes, approached them and inquired about a certain Oscar Solomon, who lives in that place. Thereupon, the deceased Norberto Flores, approached the accused and asked for a cigarette light but the latter struck him with a karate chop to the stomach using the side of his open palm, at the same time poking a gun on them saying: "Ang sama ng porma ninyo." The accused and his companion appeared to have taken liquor as they had alcoholic breath. Thereafter, Jose Garcia and the deceased Norberto Flores, went to the house of the latter and stayed by the door, while the accused and his companion proceeded to look for Oscar Solomon.

Immediately after the accused and his companion had left, Jose Garcia together with the deceased Norberto Flores, Ernesto Bautista and Isagani Reyes went to Police Precinct No. 4 on G. Tuason, Sampaloc, Manila, where they reported and complained about the "gun-poking" incident. Thereafter, the accused and his companion were picked up by three police officers and brought to the police precinct for investigation. Accused made known that he was a policeman from Police Precinct No. 8, Manila Police Department, but that he was in civilian clothes because he was on emergency leave that day.

At the police precinct, they were told to go to the investigation room located at the second floor. While inside the investigation room, the accused tried to settle the matter with Jose Garcia. Meanwhile, Conchita Flores, mother of the deceased Norberto Flores, arrived. She refused to settle the case with the accused and soon they shouted at each other. The accused said to Conchita Reyes: "Ayaw ninyong paareglo, gusto ninyo cuarta, cuarta." Thereafter, the accused Angel Reyes approached Norberto Flores, who was seated on a chair in front of the table of the investigator, Det. Domingo Gomez of the MPD, and sat on the edge of the table, about two feet away from the deceased Norberto Flores. He uttered bad words and said: "I will shoot you now", and immediately, pulled his gun from his waistline and shot Norberto Flores, who was then seated, stooping and smoking, hitting the said Norberto Flores in the abdomen which gunshot wound caused his death a few hours thereafter.

Immediately after the shot, the people inside the investigation room scampered for cover. However, Det. Domingo Gomez remained inside the investigation room. Then Det. Ferrera arrived and immediately disarmed the accused, who was placed under arrest by Det. Domingo Gomez. The accused, however, refused to give any statement.

For his defense, appellant claims that the shooting was accidental. His testimony – which was rejected by the trial court – is to the effect that when he approached the deceased Norberto Flores, who was then seated in front of the table of the investigator, he heard Norberto Flores say that he (accused) was only brave because he had a gun. This prompted the accused to answer: "You are always saying about my gun, here is my gun", after which he drew his gun from his right waist to hand it over to the deceased. While the accused was in the process of handing over the gun to the deceased Norberto Flores, the gun suddenly fired hitting the latter in the abdomen.

Appellant now maintains that the trial court erred in holding that the shooting was not accidental, and assails the trial court in giving weight and credence to the testimonies of prosecution witnesses Jose Garcia and Conchita Flores, claiming that their testimonies were not only contradictory and conflicting in material and substantial points but also because they are biased and prejudiced, being the cousin and mother, respectively of the deceased.

Upon review of the records, We find that the appellant's contentions are devoid of merit. As correctly observed by the trial court, his testimony that he accidentally shot the victim defies belief because the shooting of the victim was preceded by his threatening words. Besides, had it really been accidental, then the natural tendency of the accused would have been to immediately give help to his unfortunate victim and even to plead and express his regret to the mother of the deceased. But such was not the case. After shooting the victim, the accused still aimed his gun at the prostrate body on the floor, which prevented the mother of the victim, Conchita Flores, from going to the side of her son.

Furthermore, as pointed out by the Solicitor General in his brief, appellant's claim of accidental shooting is negated by the following facts: (1) a revolver is not prone to accidental firing if it were simply being handed over to the deceased as appellant claims because of the nature of its mechanism, unless it was already first cocked and pressure was exerted on the trigger in the process of allegedly handing it over. If it were uncocked, then considerable pressure had to be applied on the trigger to fire the revolver. Either way, the shooting of the deceased must have been intentional because pressure on the trigger is necessary to make the gun fire, cocked or uncocked; (2) even assuming for the sake of argument as correct the appellant's pretense of merely handing the firearm over to the deceased, the barrel or muzzle is never pointed to a person, a basic firearms safety rule which appellant should know as a police officer; the proper handling of the gun dictates the handing over of the same, butt first. It is indeed, strange, why in the case at bar the appellant allegedly handed over the gun to the deceased with the barrel or muzzle of the gun pointed to the latter, instead of handing it over butt first.

Moreover, after his arrest the appellant refused to give any statement to the police. Such conduct of the appellant strongly argues against his claim of accidental shooting. He could have easily explained the matter to the police. But he did not. This is another circumstance that casts doubt upon his claim of accidental shooting.

We find, therefore, no error in the trial court's conclusion that the shooting of the deceased was not accidental but intentional.

Appellant points out certain inconsistencies in the testimonies of prosecution witnesses Jose Garcia and Conchita Flores. For example, appellant claims as inconsistent their testimonies as to whether it was the deceased Norberto Flores who approached the accused or it was the accused who approached the deceased, after which the accused struck the latter with his open palm, at the same time poking a gun on him; whether appellant poked a gun on the two of them, or only on the deceased; whether after the gun-poking incident, the deceased Norberto Flores and

Jose Garcia went to the former's house before proceeding to the police precinct, or simply went directly to the police precinct; whether Conchita Flores and the accused talked for about 20 minutes inside the police precinct, or they did not talk to each other; and whether or not they shouted at each other inside the police precinct. The above inconsistencies refer only to minor and collateral matters that do not impair the credibility of Jose Garcia and Conchita Flores. The discrepancies signify that the two witnesses did not deliberately pervert the truth in their narrations. The discordance in their testimonies on collateral matters heightens their credibility and shows that their testimonies were not coached nor rehearsed.[1] Far from being evidence of falsehood they could justifiably be regarded as a demonstration of their good faith.[2]

We likewise, find no merit in appellant's claim that because these two witnesses are related to the deceased, their testimonies are necessarily biased and prejudiced. Relationship to the victim alone does not impair the positive and clear testimony of witnesses.[3]

Appellant claims the absence of treachery in the commission of the offense. There is no merit to the contention. The victim was unarmed at the time he was shot, seated on a chair at the investigator's table, stooping and smoking, completely unaware of the impending attack. The accused was seated on the edge of the table two feet away from the deceased when the former pulled out his gun from his waistline and shot the victim, immediately after the accused had uttered the words, "I will shoot you now". It is evident that appellant employed a method of attack which tended directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. Treachery, therefore, qualified the killing to murder.[4]

The crime was committed with the aggravating circumstance of abuse of public position.[5] Appellant was in civilian clothes at the time he was apprehended by policemen of Precinct 4. He identified himself as a policeman of the Manila Police Department belonging to Precinct 8. Because of his position he was not relieved of his service firearm which he had on his person in spite of the fact that the charge against him was grave threats. At the investigation room of Precinct 4, appellant had the run of the place, in a manner of speaking, again because of his position. In the course of the investigation being conducted by Det. Domingo Gomez, appellant had the effrontery and arrogance to sit on top of the table of the investigator, at the edge thereof, in utter disregard of the respect due the investigator, let alone the elementary rules of courtesy. From this position, appellant, with his service firearm, shot the deceased who was then seated on a chair in front of the investigator's table, stooping and smoking. Instead of upholding the law, appellant broke it; instead of using his service firearm for good, he used it for evil. Clearly, his crime is graver and his responsibility greater.[6]

As to the mitigating circumstances of (a) sufficient provocation; (b) passion and obfuscation; (c) drunkenness; (d) voluntary surrender; and (e) lack of intent to commit so grave a wrong, which the appellant claims to have attended the commission of the crime, We find the contention to be without merit.

Since the alleged provocation[7] which caused the obfuscation[8] of the appellant did not come from the deceased but from the latter's mother, Conchita Flores, the same may not be appreciated in favor of appellant. Besides, it may be pointed out that in the present case, provocation and obfuscation cannot be considered as two distinct and separate circumstances but should be treated as one, having arisen from the same incident.[9]

Voluntary surrender may not also be credited to the appellant because the fact that he did not try to escape or did not resist arrest after he was taken into custody by the authorities does not amount to voluntary surrender.[10] A surrender to be voluntary must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities. Here, the accused after shooting the deceased was immediately disarmed and placed under arrest. There is, therefore, no voluntary surrender to speak of because the appellant was in point of fact arrested.[11]

As to the alleged lack of intent to commit so grave a wrong as that committed the same cannot likewise be considered in favor of appellant. His clear intention to kill the deceased may be inferred from the fact that he used a deadly weapon and fired at the deceased almost point blank, thereby hitting him in the abdomen and causing death.

And as to the alternative circumstance of intoxication, it suffices to state that the medical certificate^[12] shows that appellant was not intoxicated.

Finally as to the civil liability of the accused, We find that the award of moral damages in the sum of P8,000.00 is in accordance with law. This has been sufficiently discussed in the case of *Heirs of Raymundo Castro vs. Bustos*, L-25913, Feb. 28, 1969.^[13] Likewise, in view of our finding that the crime was committed with the aggravating circumstance of abuse of public position, the award of exemplary damages is also justified.^[14]

WHEREFORE, finding the appealed judgment in accordance with the law and evidence, the same is hereby affirmed in toto.

SO ORDERED.

Fernando, Teehankee, Barredo, Makasiar, Esguerra, Muñoz Palma, Aquino, Concepcion, Jr., and Martin, JJ., concur.

Castro, C.J., concurs in the result.

Antonio, J., took no part.

[1] *People vs. Doria*, L-26188-90, Jan. 31, 1974, 55 SCRA 435.

[2] *People vs. Cabiltes*, L-18010, Sept. 25, 1968, 25 SCRA 112; *People vs. Alcantara*, L-26568, June 30, 1970.

[3] *People vs. Malillos*, L-26568, July 29, 1968.

[4] *People vs. Bengzon*, 44 Phil. 224. *People vs. Boac* 54 O.G. (21) 5721. *People vs. Peralta*, 39 SCRA 396.

[5] Art. 14, par. 1 of the Revised Penal Code, provides:

"Art. 14. Aggravating Circumstances. – The following are aggravating circumstances:

1. That advantage be taken by the offender of his public position."

[6] *People vs. Madrid*, 88 Phil. 1

[7] Art. 13, par. 4 of the Revised Penal Code, states:

"Art. 13. Mitigating circumstances. – The following are mitigating circumstances:

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4. That sufficient provocation or threat on the part of the offended party immediately preceded the act."

[8] In *U.S. vs. Esmedia, et. al.*, 17 Phil. 260 it was held that this extenuating circumstance is applied to reduce the penalty in cases where the provocation which caused the heated passion was made by the injured party.

[9] *People vs. De los Santos*, 85 Phil. 870.

[10] *People vs. Dimdiman*, 106 Phil. 391.

[11] *People vs. Conwi*, 71 Phil. 585.

[12] Exhibit "I", p. 32, Record.

[13] "When the commission of a crime results in death, the civil obligation arising therefrom are governed by the penal laws," * " subject to the provisions of Art. 2177, and of the pertinent provisions of Chapter 2, Preliminary Title on Human Relations, and of Title XVIII of this Book (Book IV) regulating damages." (Art. 1161, Civil Code)

"Thus, 'every person criminally liable for a felony is also civilly liable.' (Art. 100, Revised Penal Code). This civil liability, in case the felony involves death, includes indemnification for consequential damages (Art. 104, id.) and those suffered by his family or by a third person by reason of the crime." (Art. 107, id.) Since these provisions are subject, however, as above indicated, to certain provisions of the Civil Code, We will now turn to said provisions.

"The general rule in the Civil Code is that:

'In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant.' (Art. 2202)

"When, however, the crime committed involves death, there is Art. 2206 which provides:

'The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.'

"The amount of P3,000.00 referred to in the above article has already been increased by this Court first, to P6,000.00 in *People vs. Amansec*, 80 Phil. 426, and lately to P12,000.00 in the case of *People vs. Pantoja*, G.R. No. L-18793, promulgated October 11, 1968, and it must be stressed that his amount of moral damages, may be adjudicated even without proof of pecuniary loss, the assessment of the moral damages being left to the discretion of the court, according to the circumstances of each case." (Art. 2216)

[14] Article 2230 of the Civil Code, provides:

"In criminal cases, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party."

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